

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7066 OF 2005

Vishwanath M.Gaikwad and Ors. .. Petitioners
Vs.

Shivaji Shikshan Prasarak Mandal
and Ors. ..Respondents

Mr.S.M.Gorwadkar for the petitioners

Mr.V.M.Thorat for respondent no.1 to 8

Mr.Y.S.Jahagirdar with Mr.Rohit Pawaskar for
respondent no.1, 11, 13 to 15 and 17

WITH

WRIT PETITION NO.8133 OF 2005

Madhukar B.Mohite .. Petitioner

Vs.

State of Maharashtra & Ors. ..Respondents

Mr.V.M.Thorat for the petitioner

Mr.S.M.Gorwadkar for the respondents

Ms.V.S.Mhaispurkar, A.G.P. for the state

CORAM : S.U.KAMDAR, J
DATED : 2ND DECEMBER, 2005

P.C.:

1. These two writ petitions are challenging the common order passed by the Charity Commissioner in two applications which were preferred by both the petitioner and the respondent before the Charity Commissioner. By the said impugned order, Charity Commissioner has directed that the bank account of the trust is to be operated by the officer appointed by the Charity Commissioner being Superintendent from the office of the Public Trust Registration Office. He has also further directed under the impugned order that the change reports which are pending before the Charity Commissioner being change report no.1202 of 2005 and 1842 of 2003 be heard and decided by the Charity Commissioner.

2. The respondent in the 1st petition no.7066 of 2005 claimed that they are the duly elected managing committee of the institution whereas the petitioners are claiming that they are the duly elected managing committee of the institution. However, it is the case of the petitioner in the aforesaid petition that a new separate managing committee was elected after respondent committee

was removed from the office by passing a necessary resolution.

3. The respondent is the institution running large number of educational institutions and hospitals. The dispute among the members of the committee for managing the institution is going on from quite some time. The respondents herein claim that in fact they were the duly elected managing committee in 2003 and under the terms and conditions of the constitution, tenure of the said committee is for three years which expires only in 2006.

4. On the other hand, it is the case of the petitioner that some time on or about 12.8.05 a fresh special general body meeting was convened by the members of the general body after circulating the Agenda and after giving the notice thereof. It is the case of the petitioner that in the Special General Body Meeting a fresh set of persons are appointed by passing a resolution and it is the fresh set of persons who are now duly elected managing committee of the said institution. The

said new committee has filed a change report being dated 12.2.05. The change report filed earlier by the respondent pursuant to election held on 20.6.03 being change report no.1402 of 2003 is also pending before the Charity Commissioner.

5. In the light of the dispute raised by the parties and considered by the Charity Commissioner in his impugned order, he has directed that at present Superintendent should be appointed for the purpose of maintaining and running account. This order is challenged by both the petitioners in the present petitions. I am of the opinion that it is in the interest of the institution that the election of the new Committee be held under the supervision of the Charity Commissioner. The total number of members of the said institution were 30 and all the 30 members are eligible to vote. Of course the contention of respondent is that they have added new members but it is admitted position that they are not entitled to vote till 2006. In view of the fact that the institution must be governed and run by the duly elected managing committee and in the light of the fact that there

are serious contentions about the validity of constitution of new committee, I am of the opinion that the education institution must be run by the body which is a proper and duly elected by the members and the same should be constituted in such a manner that the day to day smooth functioning of the educational institution is not affected.

6. In light thereof, I am of the opinion that the Managing Committee should be freshly elected among the 30 members who are admittedly only members having right to vote at present and the said 30 members can elect new managing committee who will run and administer the educational institution for the reminder of terms till 2006. In the light of the aforesaid, I pass the following order:

7. Asst.Charity Commissioner is directed to conduct election of the said society. List of the 30 members to be filed with the said Asst.Charity Commissioner who are eligible and entitled to vote. The said Asst.Charity Commissioner is directed to invite the nomination and declare the election

programme. Asst.Charity Commissioner is directed to follow the bye-laws of the society and conduct a fresh election and conclude the same by 31.12.05. The committee so elected will be constituted as Managing Committee of the members for running administration of the said institution in accordance with law. The newly elected committee will be in power for the remaining tenure upto June 2006. However, it is clarified that I am giving no opinion as to the validity or otherwise of the so-called newly added members and that dispute is not touched at present since admittedly between the parties they are not entitled to vote at all at present. However, before the next election is called proper authority will be at liberty to scrutinise the said membership on application of any party and decide the same in accordance with law. Both the petitions are disposed of accordingly. No orders as to costs. Certified copy expedited.